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SUMMARY RECORD OF THE 1598th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 21 July 1997, at 3 p.m.

Chairman: Mr. BHAGWATI

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GE.97-17467 (E)

The meeting was called to order at 3.05 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT (agenda item 4) (continued)

Third periodic report of France (continued) (CCPR/C/76/Add.7; HRI/CORE/1/Add.17/Rev.1; CCPR/C/60/Q/FRA/3)

1. At the invitation of the Chairman, the members of the French delegation resumed their places at the Committee table.

2. The CHAIRMAN invited the members of the Committee to ask the French delegation questions relating to part I of the list of issues (CCPR/C/60/Q/FRA/3).

3. Mr. PRADO VALLEJO said that, having participated in the consideration of France's initial report and second periodic report, he was confident that the constructive dialogue which the Committee had already begun with the French delegation would continue and that the Committee would be fully informed of the difficulties encountered by France in implementing the Covenant and the measures taken to overcome them.

4. On that point, although it was obvious that French legislation provided full protection for human rights, the Committee had learned of certain specific cases in which articles of the Covenant, in particular articles 6 and 7, had not been fully respected. Complaints had been lodged concerning ill-treatment of private individuals by the French police and gendarmerie, in both metropolitan France and the overseas departments and territories, and the necessary inquiries had not been ordered, allowing those responsible to go unpunished. That was an obvious failure by the State party to fulfil its obligations under the Covenant.

5. He had also learned of incidents that had occurred in Tahiti, French Polynesia, in September 1995, and of police brutality against demonstrators; he would like to know whether the French Government had begun the necessary inquiries. Similarly, in New Caledonia, there had been many cases of torture and death in police custody since 1978, and it was disturbing to note that the French Government had seen fit to enact an amnesty law providing impunity for those responsible and clearly violating the victims' rights. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment had protested at the cases of ill-treatment of detainees in French prisons, and he wondered whether the French Government intended to take steps to correct that unfortunate situation. He would also like to know why a distinction was made in France between the police and the gendarmerie: apparently only the gendarmerie were authorized to use firearms when an incident occurred.

6. It was his understanding that the French anti-terrorism legislation provided for persons charged with offences against State security to be tried by special seven-person courts, whose decisions were handed down on the basis of a simple majority, an emergency measure which in his view was not necessarily justified. He would accordingly like to know the reason for that provision. In addition, the legislation appeared to be applied almost

systematically to Basques; some members of that community were arrested and placed in detention without any criminal charge. Perhaps the delegation would be able to provide explanations.

7. He noted that conscientious objectors in France had the possibility of performing civilian service instead of military service. However, civilian service was twice as long as military service - 20 months instead of 10. He therefore wondered whether such a measure was not punitive in character for those who opposed military service. Did the French Government intend to amend the relevant provisions in order to bring them into line with internationally-accepted standards?

8. Mr. KLEIN said that he also welcomed the continuing dialogue with the French delegation and hoped that it would shed some light on the aspects of the human rights situation in France which remained disturbing.

9. He, too, had been informed of the large number of unjustified acts of violence perpetrated by officers of the police and national gendarmerie. As he understood it, the gendarmerie was a military institution which came under the purview of the Ministry of Defence, which might raise some questions as to why civilians should be subject to a military authority. He had also learned that excesses had allegedly been committed in implementing the French anti-terrorism legislation, which he believed the prosecutor was responsible for applying. He would therefore like to know the prosecutor's status, particularly in relation to the Ministry of Justice, how independent the prosecutor could be in performing his duties and whether he received instructions from the Government. He asked what amendments were planned in the relevant legislation.

10. He understood that detainees in some French prisons were held in humiliating conditions, in particular prisoners of Basque origin. He would appreciate the French delegation providing more details on that question and, in particular indicating whether the provisions of article 10, paragraph 1, of the Covenant were being fully respected.

11. Paragraph 145 of the French report (CCPR/C/76/Add.7) stated: "Convicted prisoners may correspond with anybody, daily without restriction and receive letters from anybody. However, their correspondence may be read and monitored by the prison authorities". He did not contest the need for some monitoring, but would like to know in which particular cases monitoring was carried out. The same paragraph stated that detainees had the right to correspond with European authorities, the list of which was regularly updated. He would like to know whether the Committee was on that list. He asked what steps were being taken to protect prisoners against violence or harassment, in particular sexual harassment, by their fellow-prisoners. In addition, what steps were taken if it was proved that the criminal proceedings had, at any stage, been unduly long? Were detainees released and were they entitled to compensation?

12. Concerning articles 12 and 13 of the Covenant relating to liberty of movement, he would like to know how the non-refoulement principle was applied in practice, and whether an asylum seeker could appeal to the courts in the event of a negative decision and expulsion. In connection with the right to leave the national territory, discussed in paragraph 182 of the report, he

asked what law empowered the administrative authorities to refuse to issue a passport, and whether the list of cases (a) to (f) was still valid. Regarding loss of nationality through declaration by decree, mentioned in paragraph 188 of the report, he asked whether a French national who had lost French nationality in the cases listed could still consider France to be his or her country.

13. Mr. LALLAH thanked the French delegation for resuming its dialogue with the Committee. He was surprised, however, that the Government of France, a highly developed country which did not lack the means to prepare the reports it was under an obligation to submit, had submitted its third periodic report four years late.

14. The report contained a very detailed description of the legal enactments applicable in France, but failed to give precise information on the implementation of the Covenant in practice. He would particularly appreciate clarification from the French delegation on the implementation of articles 2, 23, 24 and 25 of the Covenant, especially with regard to the concept of equality before the law and the independence of the judiciary.

15. A recent article in the French daily Le Monde had referred to discontent among the French judiciary: over 500 magistrates had apparently signed an appeal stating that there was a need to expand the reform of the judiciary, noting that the courts might not be perceived as being fully independent in France and that that situation might be due to the method of appointing judges and prosecutors. He did not know to what extent their method of appointment encouraged prosecutors to take the initiative in instituting legal proceedings, but he was in possession of information to the effect that prosecutors were reluctant to open inquiries into complaints by victims of police brutality. He would like to know the reasons for the prosecutors' reluctance or the difficulties they encountered in acting on such complaints, and to know what kind of deposit was sometimes required for an inquiry to be opened. Was it a cash deposit?

16. The Covenant contained provisions that were not found in the European Convention on Human Rights; he had in mind articles 23, 24 and 25 of the Covenant in particular. Under article 2 of the Covenant, States parties undertook to take the necessary steps, in accordance with their constitutional processes and with the provisions of the Covenant, to adopt such legislative or other measures as might be necessary to give effect to the rights recognized in the Covenant that were not already in force. He stressed the importance of administrative or other measures for guaranteeing the independence of prosecutors and administrative authorities in France. In his own country, a commission independent of the executive was responsible for appointing all judges, from the lower courts up to the Supreme Court. There might, however, be other ways of ensuring the independence of the judiciary: the newspaper article he had mentioned earlier spoke of examination of the candidates by a jury made up of representatives of various sectors.

17. Concerning equality before the law (Covenant, art. 26), he quoted a 3 July 1997 policy paper by the National Consultative Commission on Human Rights concerning the rights of foreigners. The paper contained a brilliant analysis of the principles that should govern not only legislation but also

the practices followed to implement it. After stressing the principle of equality, freedom to come and go, the right to lead a normal life and the right to seek a decent living, the paper made recommendations which appeared to him to be not only necessary but urgent as they pointed up deficiencies in French legislation which prevented people from enjoying equality. Concerning the freedom to enter and leave a territory, for example, and foreigners' access to the national territory in particular, the paper stated that any restrictive legislation or regulations must clearly define the goals justifying them and state how judicial supervision would be exercised.

18. In that context, the right to lead a normal family life was currently governed in France by regulations containing numerous restrictions that were incompatible with the principle of equality. The family reunification procedure continued to be subject to conditions (Ordinance of 1945) which rendered it difficult to apply in practice, as the above-mentioned policy paper also stated. For example, in order to bring his family to France, a foreigner must have been lawfully residing there for two years and have a regular income and a dwelling that met certain standards with regard to size. Partial family reunification was prohibited and unlawful reunification subject to heavy penalties. The note concluded that many foreigners found it impossible in practice to bring their families to France simply because they did not meet all the requirements: they were unemployed or temporarily employed or their dwelling was too small. That raised the question whether a French person who was unemployed or living in a small dwelling was forbidden to live with his or her spouse and children.

19. There also seemed to be two conceptions of family law in France. The first concerned French nationals and took account of changes in society, with for example gradual recognition of free unions, consideration of the child's interests in the event of the parents' separation and, very importantly, broadening of the concept of entitlement to social security. Again according to the above-mentioned policy paper, however, there was a more rigid and narrower conception of family life as it applied to foreigners: cohabitation was not taken into account, divorce implied a "risk", the children must be legitimate children of the couple or they would not be able to enter France, there was widespread suspicion of mixed-race families, marriages between French people and foreigners were automatically suspect, and the prosecutor could delay marriage in case of doubt. Yet article 23 of the Covenant recognized the right of men and women of marriageable age to marry and to found a family. In France, even after the marriage was concluded, it was difficult to regularize the foreign spouse's status, as it was subject to various conditions: one-year wait following the marriage, lawful entry into and stay in France in order to receive a residence permit. All those requirements did not seem to be in line with France's obligations under articles 23 and 24 of the Covenant. Lastly, the policy paper pointed out that some surprising distinctions were made between the various nationalities of foreigners (Congolese, Moroccans, etc.) with respect to the right to seek a decent living. In his view, the recommendations contained in the policy paper should be taken into consideration by the French authorities.

20. Lastly, he asked whether French people living in the overseas departments and territories had the same rights as people living in metropolitan France under the agreements concluded by France with its European Union partners.

21. Mrs. EVATT observed that the French delegation's replies to the questions on the list of issues raised new questions for the members of the Committee. Given that discriminatory behaviour on grounds of race was punishable by law (para. 20 of the report) and that in the event of such behaviour by a private individual the victim could institute proceedings before the civil courts where there had been negligence (para. 35), what needed to be established in court to prove that there had been a violation of the rights set forth in article 2 of the Covenant? In view of the fact that there was an ombudsman responsible for considering violations of rights by the administration, she would like to know whether there was also a mediation or conciliation mechanism for disputes involving a complaint of discriminatory behaviour lodged by a private individual against another individual or private entity, aimed at resolving the conflict out of court.

22. The French Constitution established the equality of all citizens before the law, without distinction as to origin, race or religion (report, para. 394); that provision was clarified in paragraph 26, which stated that the principle of the equality of all citizens before the law implied that persons in identical situations were treated in the same way. She would like to know on what legal basis a distinction could legitimately be made between different people, when for example, there was a need to exempt a person from certain legal requirements on the basis of his or her religion, language or culture. Similarly, she would like to know to what extent France considered affirmative action to be an appropriate means of combating racism and discrimination in access to housing and employment and in other areas where the equality of immigrants might be affected.

23. Questions had already been asked about the ill-treatment and abuse of persons in police custody or pre-trial detention. In that connection, she asked for additional information to that contained in paragraphs 91-94 of the report. She would particularly like to know whether prosecutors had the power and responsibility to institute proceedings when there was indirect or direct evidence that a person in custody had been subjected to violence, abuse or torture. Were prosecutors required to open an inquiry? Or were they required to wait until the victim instituted the procedure by lodging a complaint with a court, which could be financially burdensome for the plaintiff? According to some NGOs, it was rare for inquiries into cases of police brutality against persons in custody to be opened on the initiative of the prosecutor; it was up to the victim to begin the procedure. She would like to know the number of cases of alleged violation of the rights set forth in article 7 in which the procedure had been instituted by the prosecutor, compared with the number in which it had been instituted by the victim. In cases where an internal inquiry into a police officer's behaviour led to a finding of misconduct by the officer, was he suspended during the judicial inquiry? And how soon was such an inquiry opened?

24. In connection with the implementation of article 6 of the Covenant, and in the light of paragraph 87 of the report (CCPR/C/76/Add.7), she asked whether France had considered ratifying the second Optional Protocol to the Covenant. Referring to reports from Amnesty International and other NGOs to the effect that deaths in custody were on the rise and were in many cases due to suicide and lack of supervision, she requested statistics on the number of such deaths, on efforts to monitor the situation and see whether that number

was increasing, on the percentage of deaths from suicide and on the proportion of immigrants or members of minorities among those who had died. According to her information, solitary confinement used as punishment was one of the causes of the increase in cases of suicide among detainees, together with prison overcrowding, harassment and lack of psychological support for prisoners. She would welcome more information on the situation.

25. She would also like clarification of the situation regarding the detention of minors on criminal charges. It was her understanding that children under 13 years of age could not be held in custody or pre-trial detention, but she was not certain; she would particularly like to know whether minors between 13 and 16 years of age could be detained pending trial and for what types of offence. Concerning the legal representation of juvenile offenders, she would like to know whether counsel could review the entire file of a minor charged with a criminal offence. According to her information, the judge allowed the lawyer of a young offender barely 5 or 10 minutes to consult the file in a summary procedure, even though the procedure could result in decisions with far-reaching consequences. She understood that when extrajudicial measures (mediation) were taken, access to a lawyer's services was limited and the minor was not entitled to legal aid. The procedures involved, however, could lead to rehabilitation or re-education measures; she would like to know how the rights of the accused were protected, in particular when the accused was a minor.

26. Lastly, in cases of contumacious judgement, she would like to know whether an accused or convicted person had the right to legal representation, either on appeal or at a new hearing.

27. Mrs. GAITAN DE POMBO said that several of her concerns had already been expressed by other members of the Committee. She would like to know what policies and practical measures were adopted by France to give effect to article 10 of the Covenant, and especially to guarantee the rights of the most vulnerable categories of the population, namely women and foreigners in detention. Her second question concerned the possibility, provided for under French legislation since 1981 for persons who believed that they had been victims of a violation of a right set forth in the European Convention on Human Rights to address themselves to the European Commission and, if their complaints were found to be admissible, to seek an amicable solution, or even to bring their case before the European Court if an amicable solution proved impossible. She would also like to know whether statistics existed on the use of those protection mechanisms, which she regarded as complementing the domestic mechanisms, how many cases had been submitted to the European Court and what domestic procedures were available to give effect to that right.

28. Mr. ANDO said he had several questions about the treatment of refugees. According to information he had received, the Schengen Agreement, to which France was a party, contained a provision intended to reduce the flow of economic refugees seeking political asylum. The desire of Governments to curb that trend was understandable, but one of the methods used by France consisted in requiring the air carrier to pay for the return trips of unsuccessful applicants. In some cases the carrier was also required to pay a very heavy fine. In his view, that practice could have the effect of preventing genuine, good-faith asylum seekers from coming to France because they had not obtained

all the documents required and had been refused a ticket. The delegation had spoken of seeking a delicate balance between firmness and generosity; he would like to know how that balance was to be maintained without harming genuine political refugees.

29. France had concluded extradition treaties with neighbouring countries, notably member countries of the European Union. He appreciated that terrorism was a serious problem in certain European countries, but under those treaties persons suspected of terrorism could be sent back to countries where they might be subjected to ill-treatment or even torture. However, the principle that a person should not be sent back to a country where he or she would run such a risk was an essential tenet of international law. In that case, too, he would like to know how France maintained a balance between the need for the State to protect itself against terrorism and the requirements of international cooperation and the law.

30. Paragraphs 192-199 of the report (CCPR/C/76/Add.7) dealt with the expulsion of aliens, in particular expulsion that could be ordered, in an emergency, without any prior consultative procedure. However, the procedure seemed to be different for foreigners in metropolitan France and for foreigners in the overseas departments and territories (para. 195). He would like to know whether the criteria applicable in each case were different and, if so, whether the delegation could provide specific examples.

31. Mr. BUERGENTHAL, referring to paragraphs 125 and 126 of the report concerning pre-trial detention, said that according to the statistics provided approximately 40 per cent of indicted persons were placed in pre-trial detention. That was a rather high proportion and would appear to indicate a tendency to order such detention, whereas article 9 of the Covenant stipulated that pre-trial detention should not be the rule. In addition, if a case was dismissed or the accused was discharged or acquitted, he or she could claim compensation when the detention had caused injury that was "manifestly abnormal and of particular gravity" (para. 126), which, in view of the high number of pre-trial detention orders, was hardly compatible with article 9, paragraph 5. It could obviously be argued that the pre-trial detention had not been illegal, since it had been ordered by the examining magistrate, but that was not a sufficient explanation.

32. Secondly, he would like to know whether the inhabitants of the overseas departments and territories had complete freedom of movement in metropolitan France, whether they could bring their families and work as soon as they arrived in France, and, generally speaking, whether they had all the rights enjoyed by a French citizen in France.

33. His third question concerned loss of French nationality, discussed in paragraph 190 of the report. He noted that persons who had acquired French citizenship through naturalization could lose their citizenship if they committed an act categorized as an offence that had a certain degree of seriousness but was unrelated to actual acquisition of nationality. He supposed that that rule did not apply to people who were French by birth and wondered whether it was compatible with article 26 of the Covenant, since in his view it constituted obvious discrimination among different categories of French people.

34. Fourthly, the legal aid mentioned in paragraph 232 of the report was designed to enable persons with insufficient resources to assert their rights before the law, but it appeared to apply only to certain categories of foreigners. He would like to know whether a foreigner unlawfully present in France who committed a murder or other serious offence was entitled to legal aid if he could not afford the services of a lawyer.

35. Mr. KRETZMER associated himself with all the questions asked, especially those relating to the different rules applicable to different branches of the executive responsible for maintaining public order. The explanations given concerning the context in which the special decree on the gendarmerie had been issued had not clarified the reasons for the different rules on the use of firearms, given the fact that police officers and gendarmes performed the same tasks.

36. He associated himself with all the questions asked in connection with articles 12 and 13 of the Covenant. He would also like to know the French Government's position with regard to people who, although not meeting precisely the definition of a refugee laid down in the 1951 Convention relating to the Status of Refugees, felt threatened for reasons other than race, religion, nationality, membership of a particular social group or political opinion, as set forth in article 1 of the Convention. There could, for example, be situations of discrimination on grounds of sex, such as those involving women from countries where excision was systematically practised; they might very well be afraid to return to their country and might apply for refugee status despite the fact that they did not meet the exact definition. The same was true of people whose lives were threatened, not by governmental forces but by other violent forces, and who did not feel that they would be protected in their country. The most recent example was obviously that of the Algerians. He would like to know France's policy towards them.

37. He agreed with other members of the Committee that the French Government appeared to be passing its responsibility towards asylum seekers onto private institutions by fining airlines which allowed passengers without papers to travel on their planes. He also associated himself with the concerns expressed about sending people back to their countries when they were in danger of being subjected to torture. Regarding expulsion, he had understood that a person who was refused the right to remain in the territory had 24 hours in which to institute proceedings, but he had also learned that in some cases people awaiting expulsion had been made to sign a paper waiving that right. He asked whether a 24-hour period was sufficient and requested further details about that paper.

38. The question of complaints against the police and the corresponding inquiries had already been raised. The situation appeared to be complicated, and in any event was not clear to him. As he understood it, the prosecutor had a free hand in deciding whether or not to open an inquiry into cases of police brutality against members of the public. It was true that victims could institute a criminal indemnity action and that there was a police supervisory body empowered to investigate. It would, however, be useful to know whether there was some other independent mechanism empowered to investigate action by the police without need for the victim to institute proceedings. Amnesty International had drawn the Committee's attention to the

case of a young Rom who had entered France illegally in a convoy of vehicles from the former Yugoslavia, then at war, in August 1995. The police had opened fire and the boy had been killed. The other Roma had been expelled, and none of them had been called as a witness in the inquiry into the boy's death. The case raised two questions, that of inquiries into police action and relevant guarantees, and that of the sending-back of people coming from a war-stricken region.

39. Mrs. MEDINA QUIROGA thanked the French delegation for its very informative replies. She associated herself with the concern expressed by the other members of the Committee about the right of asylum, and especially the practice of passing to airlines responsibility for deciding who was entitled to seek asylum. She would also like to know what legal protection was given to refugees who arrived by sea and were kept on board ships. The delegation had explained that there were regulations governing access by humanitarian organizations and even UNHCR to waiting zones, but clarification should be provided on the nature and scope of those regulations. The delegation had also acknowledged that the practice of expulsions by charter raised a problem; she wondered whether that meant that it would be terminated. Asylum seekers might include people at serious risk of suffering bodily harm, for example genital mutilation, forced sterilization, torture or even forced marriage. Could such grounds be invoked in an application for refugee status? It would also be interesting to have statistics on the number of expulsion orders which had resulted from the emergency procedure and the number of cases where an expulsion order had been revoked after the person had already been expelled. The situation of individuals being held in a waiting zone while efforts were being made to find a country willing to accept them also needed to be clarified. Were they given financial aid? Did they have working papers? What were the living conditions of those with children?

40. A number of questions arose in connection with article 9 of the Covenant. Given that xenophobia was on the rise in Europe, the police might very well be arresting an excessive number of young people and members of ethnic minorities; she would accordingly appreciate receiving statistics from the delegation. Since the prosecutor had the power to initiate inquiries and institute proceedings for police brutality, it would be useful to know whether he was obliged, or simply empowered, to do so. If he was simply empowered, the delegation might give some indication of the frequency with which prosecutors instituted proceedings of their own motion in such cases. According to the information available, it was often also necessary to bring in civil indemnity action, and she wondered whether that was because such proceedings were to the victim's advantage or whether they were necessary because no other proceedings had been instituted. Regarding the arrest of minors, paragraph 130 of the report stated, "with regard to ordinary offences ... pre-trial detention ... has been prohibited ...". She would like to know which authority determined whether the offence was an ordinary offence, and what criteria were used.

41. Concerning article 10 of the Covenant, she asked whether the new prison regulations adopted in 1996 contained provisions governing not only incommunicado detention but also solitary confinement, and would like details on the conditions for placing a prisoner in solitary confinement. She would also like to know whether girls were separated from adults in women's prisons.

In connection with article 14 of the Covenant, she noted that paragraphs 242 and 243 of the report dealt with confession, but said nothing about cases where confessions had been obtained through ill-treatment. She would like to know whether such confessions were automatically excluded, and if so, whether they were excluded in accordance with a legislative provision or simply as a matter of case law. In addition, she inquired which party had the burden of proof in determining whether confessions had been obtained under duress. To have an idea of the scope of the anti-terrorism legislation, she asked who actually decided whether a case came within the purview of that legislation or whether it should be brought before an ordinary court, whether precise criteria had been laid down for that purpose, how many people had been placed in detention under the legislation, and under what conditions.

42. She endorsed Mr. Lallah's concerns about the protection of family life and expressed the hope that the delegation would provide all necessary explanations in its replies to the questions in the second part of the list of issues.

43. Mr. POCAR said that the first point to be made about the periodic report was that, for a country such as France, a delay of four years - a period equal to the time between two reports - was far too long. States' obligations under article 40 provided the basis for the international monitoring system set forth in the Covenant, and it might be asked what the precise reasons for such a delay could be.

44. Paragraph 87 of the report stated that, following the abolition of the death penalty, a number of articles of the Code of Military Justice concerning the death penalty had also been abrogated or amended; he wondered whether the death penalty had been totally abolished in the military system of justice. He also wondered why France had not yet ratified the second Optional Protocol to the Covenant aimed at the abolition of the death penalty. He drew attention to the Committee's two general comments on article 6 of the Covenant (general comments 6[16] and 14[23]), in which it expressed the view that article 6 should not be interpreted narrowly and that it referred not only to the death penalty but to all activities endangering life, including the testing of nuclear weapons. France had conducted nuclear weapons tests, even though it was considered in scientific circles that the consequences of such experiments were unpredictable and not entirely without danger. It must therefore be asked what measures the French authorities had taken to protect the people living in the test areas.

45. France had entered a reservation to article 13 of the Covenant in the following terms: "The Government of the Republic declares that article 13 cannot derogate ... from the other instruments concerning the expulsion of aliens in force in those parts of the territory of the Republic in which the Order of 2 November 1945 does not apply." He would like to know the scope of the instruments from which article 13 could not derogate. The Government of France had also entered a reservation to article 14, paragraph 5, as stating a general principle to which the law might make limited exceptions, for example, in the case of certain offences subject to police courts and in the case of criminal offences. He would like to know exactly what offences that interpretation applied to.

46. Mr. SCHEININ joined all those members of the Committee who had commented on the wealth of information provided orally by the delegation. He associated himself with all the questions asked about the situation of asylum seekers, and also asked how the French authorities guaranteed the right to apply for asylum when they ordered asylum seekers to be confined on board ships and thereby prevented them from going ashore to submit their application.

47. The role of the gendarmerie and the regulations on firearms raised some problems. The fact that regulations on the use of firearms by the gendarmerie were set forth in an administrative circular published in 1945 might be considered sufficient to indicate incompatibility with current international guarantees. The question of bringing legislation into line with current international standards also arose in connection with the military system of justice, specifically the military system of detention for disciplinary offences. France had entered a reservation to articles 9 and 14, and there was no information in the report on that detention system. France had been a party to the Covenant for 15 years, however, and it must have conducted an assessment of the functioning of the military system of detention in relation to the provisions of the Covenant. He would like to know its results.

48. Mr. YALDEN welcomed the French delegation and thanked it for its clear, concise and thorough report.

49. His questions mainly related to the acquisition of French nationality. He would appreciate receiving a breakdown of naturalized persons by country of origin. What was the proportion of people from European countries in comparison with other regions? He would also like details on the minimum requirements for obtaining nationality and asked whether the provisions being prepared, aimed at establishing the jus soli principle, would tend to make acquisition of French nationality easier or more difficult. With regard to illegal immigrants, he asked what the current policy was towards "mass expulsions" or expulsions by charter. He also wondered what was meant by the expression "serious threat to public order" justifying the expulsion of an alien (report, para. 192), as it was very broad. Moreover, since expulsions were ordered by the Ministry of the Interior, he would like to know whether the decision could be challenged and before which authority. He also inquired whether immigrants without identity papers could submit complaints to the Consultative Commission on Human Rights or the ombudsman. In connection with control mechanisms, he asked whether there was an institution independent of the ministry responsible for supervising prison administration and empowered to receive complaints from prisoners.

50. The CHAIRMAN thanked the French delegation for its detailed information, but noted that several points remained to be clarified. The members of the Committee had expressed various concerns with which he associated himself, in particular regarding the delay in submitting the report. He was also concerned at the contents of paragraph 213 of the report to the effect that only the Ministry of Justice could initiate disciplinary proceedings against judges.

51. Regarding the implementation of the provisions of article 9, paragraphs 3 and 5, of the Covenant, paragraph 126 of the report stated that a person who had been detained could claim compensation if the detention had

caused him injury that was manifestly abnormal and of particular gravity. That language was obviously too general, and the "manifestly abnormal" nature and "particular gravity" of the injury were very difficult to determine. Amnesty International had drawn the Committee's attention to a number of deficiencies in the administration of justice, specifically in the treatment of human rights violations attributable to law enforcement officers, a situation which apparently made it impossible for the victims to file a remedy. The French delegation had stated that the authorities had taken measures and punished the culprits in several cases, which was commendable. But had punishment been meted out to the members of the gendarmerie who had arrested and ill-treated 16 trade-union members in Papeete for protesting against the resumption of French nuclear testing in the Pacific? He agreed with Mr. Pocar that in certain circumstances nuclear testing could lead to a violation of article 6 of the Covenant, and would like to know what measures had been taken by the French authorities to ensure that that did not occur.

52. He asked whether the decisions of the special courts established under the anti-terrorist legislation were subject to appeal and, if so, before which authority and in what circumstances. Terrorism obviously raised a difficult problem, for France and for other countries, but the authorities must provide appropriate guarantees.

53. The 1989 amnesty measures in respect of New Caledonia constituted an obvious violation of the Covenant, and he referred the French delegation to the Committee's general comment 20 (HRI/GEN/1/Rev.2). He would also like to know how those measures could be reconciled with article 2 of the Covenant, and in particular the Committee's interpretation of the article.

54. France apparently did not admit threat of persecution as a ground for political asylum unless it came from the State. If the threats did not originate from a government agency, France apparently refused to grant refugee status. That was a rather harsh approach, and he drew the delegation's attention to the position of the Canadian authorities, who took threats other than those by State agents into account.

55. He invited the French delegation to reply to the additional oral questions asked by members of the Committee in connection with part I of the list (CCPR/C/60/Q/FRA/3); he believed it would like a few minutes in which to prepare its replies.

The meeting was suspended at 5.15 p.m. and resumed at 5.35 p.m.

56. Mr. PERRIN DE BRICHAMBAUT (France) thanked the members of the Committee for their many pithy, well-thought-out questions, to which his delegation would attempt to reply as thoroughly as possible. The questions were an indication of the Committee's confidence in France and its expectations of a major democracy like France in the area of the protection of human rights.

57. First, the French authorities wished to apologize to the Committee for the delay in submitting the third periodic report (CCPR/C/76/Add.7). That having been said, there were some attenuating circumstances, namely the two recent major elections in France, which had somewhat distracted the political authorities from their international human rights obligations, and the size of

the delegation which had come to present France's third periodic report to the Committee, which reflected both the growing complexity of government agencies in contemporary societies and the need to mobilize a very large number of agencies in order to submit a comprehensive and accurate report. His delegation nevertheless assured the Committee that it would make every effort to ensure that subsequent periodic reports were submitted on time.

58. After making a few general remarks, he would yield the floor to other members of his delegation who would reply in more detail on points within their areas of expertise. On the question of terrorism, France had unfortunately experienced a significant wave of violence in recent years, which had made it necessary to adopt particularly strict security measures in the framework of the "Vigipirate" plan, and which had pointed up the need for a legislative instrument that would make provision for emergency procedures. The authorities made only discriminating and moderate use of that mechanism, however. He was not able to state the number of proceedings recently instituted under the anti-terrorist legislation, but he could say that 32 individuals had been convicted in 1995.

59. Questions had been asked about the membership of the assize courts trying cases involving terrorism. The assize court, which now comprised seven judges, was the result of the measures taken to end the previous situation, in which members of the jury had received death threats, and was an attempt to ensure that the administration of justice took place under the safest and fairest possible conditions. Experience had so far shown that those courts did not detract from the legitimate interests of the defence, and none of their decisions had been challenged in the European Court of Human Rights, despite the fact that members of the legal profession in France had been paying increasing attention to the Court and were familiar with all of its possibilities. His Government could not fail to feel a certain sympathy towards other countries faced with similar problems and tried to give them the support they needed, within the strict limits of the law.

60. Some members of the Committee had criticized his delegation for failing to provide enough specific examples of protection of human rights in France. He wished to reassure the Committee that all the groups and bodies working to defend human rights in his country were extremely dynamic and energetic.

61. The NGOs, in particular, were increasingly active, and their work was followed up by the National Consultative Commission on Human Rights, which worked closely with, and made recommendations to, the Prime Minister on a fully independent basis. His delegation would revert to the role of the Commission later.

62. He also wished to stress the dynamic work being done by the judiciary, which had recently shown its independence in a number of cases involving political party financing and fraudulent use of company assets, which had completely changed the public perception of the judiciary's role and the attitude of prominent members of society to their own behaviour.

63. Members of the French judiciary and private individuals alike were increasingly interested in the activities of the international human rights courts, some 1,500 persons having submitted applications to the European

Commission on Human Rights in 1996. Some of those complaints had been found inadmissible, essentially under the subsidiarity principle. Generally speaking, his Government received nearly 100 requests for observations in reply to communications from private individuals every year. In that connection, he referred the Committee to paragraph 36 of the French report. Amicable settlements often took the form of financial compensation of the victim. Approximately half of the applications led to such a payment. In 1996, France had submitted observations concerning 14 cases, all involving very important principles; he assured the Committee that the case law of the European Court of Human Rights was closely followed by all French courts of law. In fact, the Court had ruled against France more often than any other country in recent years. That did not mean that the proportion of applications that had led to judgements against France was higher than for other countries; it simply meant that French people did not hesitate to apply to an international forum in order to assert their rights. The isolated cases of ill-treatment of private individuals by law-enforcement officers must be viewed against that background. He did not deny the occurrence of some such cases, which had been rightly denounced by NGOs, but would draw members' attention to the fact that, in a democratic society like France where the press and NGOs were increasingly active, such cases were reported more often than in the past, and that the French Government provided considerable support in terms of educational and training measures for police and prison officers. The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, which had visited France three times in recent years, had stated in the report on its 1996 visit that it had received no complaints of human rights violations in prisons. On the other hand, the Committee had mentioned a few cases of police brutality, which were being thoroughly investigated by the competent French authorities.

64. The dual nature of the police forces in France, which also appeared to trouble some members of the Committee, was a national characteristic. The role of the gendarmerie was essentially rural: it performed police functions and maintained order in the country areas; once a town reached a certain size, those functions were transferred to the municipal or, in some cases, national police. The gendarmerie was a deep-rooted institution in French society, and its communication skills and understanding were traditionally a very positive element of rural society, which largely explained why the two police forces had existed side by side until the present day. His delegation had taken due note of the Committee's concern at apparent divergencies between the gendarmerie and the police, in particular with regard to rules on the use of firearms, but it assured the Committee that both were subject to the same case law, which was scrupulously applied.

65. Regarding nationality, he explained that an average of 90,000 persons acquired French nationality every year and that 40,000 of them were naturalized by decree. As an integration measure, the authorities would endeavour to reduce the waiting period to 12 months, in order to accelerate the naturalization process.

66. On the matter of nuclear testing in the Pacific, he said that, at the request of his Government, an international scientific advisory committee that included IAEA representation had been established to conduct studies on the radiological situation in the atolls where the facilities of the Pacific

experimentation centre had been located up to the time when the tests had been concluded. The committee was to conduct a number of specific long-term studies, but had not found anything of the least concern so far. His Government had also asked a professor from the University of Minnesota to head a mission of experts which would conduct additional studies in the geological and hydrogeological fields. Various States and NGOs had instituted proceedings before a total of 13 bodies, including the Human Rights Committee, with the aim of having the latest series of French nuclear tests declared illegal. In none of those cases had France been condemned.

67. The previous Government had begun a number of reforms, relating in particular to the assize courts and the abolition of national service. There were also plans for a reform of the organization of the judiciary, and a commission known as the Truche Commission had recently submitted its report on the question to the new Government. The Government had announced several other changes, especially regarding immigration requirements and the right to French nationality. Generally speaking, France had initiated a sustained and dynamic process of reform.

68. The questions on the overseas departments and territories and their specific cultural features would be answered in connection with part II of the list of issues (CCPR/C/60/Q/FRA/3).

69. Mr. FAUGERE (France) said that the National Police Inspectorate had a clearly defined mission with respect to procedures for administrative inquiries into cases of ill-treatment by State employees, which it took very seriously. In particular, judicial police officers were responsible for administrative and judicial inquiries, with competence for all personnel involved and for all types of misconduct. There were three disciplinary offices subordinate to the Inspectorate-General; there were also two regional branches (Lyon and Marseille) and a central disciplinary office covering the rest of France. In addition to the individual responsibilities which such procedures brought to light, they also pointed up difficulties due to the way a particular department was organized or to certain habits. The conclusions of the inquiries generally enabled such structural defects to be corrected. He referred the Committee to two Ministry of the Interior directives of 1995 and 1997, the most recent of which stressed standards of professional conduct and the priority which a superior officer must accord to them. In short, the chief must set an example, and he himself was monitored by his own superiors. Both of the above-mentioned directives were recent, but they would undoubtedly have an effect. A new directive was being prepared, for incorporation into the internal regulations of the national police, and would contain important provisions on the protection of persons detained or held in custody by the national police, in particular regarding the use of handcuffs. All those measures were examples of the way in which the French authorities took account of the observations addressed to them in the context of the implementation of the Covenant.

70. On the difficult matter of Spanish nationals of Basque origin, raised by Mr. Prado Vallejo, he acknowledged that the procedure for sending Spanish nationals of Basque origin who were ETA activists back to their country of origin was in most cases a judicial extradition. In some cases, it was an administrative procedure under a 1945 ordinance relating to the sojourn of

aliens in France, which provided for the possibility of emergency expulsion, in cases of overriding necessity for State security, of aliens in French territory who constituted a very serious threat to public order. The Spanish nationals of Basque origin who had been expelled under that ordinance had frequently been sentenced to heavy penalties for acts committed in French territory which seriously endangered public security in France. Those administrative procedures had indeed led to the sending-back of a number of Spanish nationals, but always after a thorough examination of their personal situation, and in particular the conditions in which the return would take place. Some of the persons expelled had submitted applications to the European Commission of Human Rights; he wished to emphasize that, in a decision of 5 December 1996, the Court had validated the position of the French authorities to the effect that Spain was a State governed by the rule of law and that there was nothing to indicate that the administrative procedure applied in those cases had amounted to covert extradition. Furthermore, according to the French Government's information, a person sent back who had not been prosecuted in Spain was neither detained nor arrested by the Spanish police. He stressed that the French authorities did not hand the person over to the Spanish Government, but simply expelled him from French territory. In cases where the individual had previously been granted refugee status in France, it went without saying that no expulsion order could be issued against him and, at worst, he was subjected to a restricted residence order in French territory. Spain was under very serious threat from terrorism, and the French Government was bound to show understanding of that fact when it examined problems relating to the presence of Spanish nationals of Basque origin in French territory. However, due process was respected in all cases.

71. The CHAIRMAN invited the members of the Committee to continue their consideration of France's third periodic report (CCPR/C/76/Add.7) at a subsequent meeting.

The meeting rose 6.05 p.m.